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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

KAMAU DORSEY,

Defendant and Appellant.

B219835

(Los Angeles County  
Super. Ct. No. BA355883)

APPEAL from a judgment of the Superior Court of Los Angeles County,  
Frederick N. Wapner, Judge. Affirmed.

Joshua L. Siegel, under appointment by the Court of Appeal, for Defendant and  
Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant  
Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Mary  
Sanchez and Michael J. Wise, Deputy Attorneys General, for Plaintiff and Respondent.

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Following the denial of a motion to suppress evidence, Kamau Dorsey pleaded no contest to one count of transportation of a controlled substance in violation of Health and Safety Code section 11379, subdivision (a).<sup>1</sup> On appeal Dorsey contends the Ecstasy tablets found in his car should have been suppressed as the fruit of an unlawful search. We affirm.

### **FACTUAL AND PROCEDURAL BACKGROUND**

Dorsey initially moved to suppress evidence (Pen. Code, § 1538.5) at the preliminary hearing. Evidence at the hearing established that in November 2006 agents for the federal Drug Enforcement Administration (DEA) were conducting a narcotics investigation and, through the use of a wiretap, intercepted a series of telephone calls indicating the target of the investigation, Tony Hoang, would soon engage in an illegal drug transaction. Specifically, Hoang planned to deliver 1,000 tablets of Ecstasy to an individual outside a supermarket in Monterey Park on November 13, 2006. The wiretap information disclosed the recipient of the illegal drugs would be driving a black Saturn.

DEA agents followed Hoang in his car to the supermarket; a black Saturn was already waiting in the parking lot. Hoang drove into the lot and parked. The driver of the black Saturn, later identified as Dorsey, entered Hoang's car. About two minutes later, Dorsey returned to his car. He did not appear to be carrying anything.

Dorsey left the parking lot, followed by DEA agents, and drove to a shopping mall in West Covina. He parked his car and entered the mall, accompanied by a man who had apparently been a passenger in Dorsey's car.<sup>2</sup> DEA agents lost sight of both men inside the mall and decided to wait for them to return to the car. At some point, Dorsey and his

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<sup>1</sup> The trial court sentenced Dorsey to four years in state prison, suspended execution of sentence and placed him on five years formal probation on condition he serve 38 days in county jail with credit for time served. The court dismissed one count of possession for sale of a controlled substance (Health & Saf. Code, § 11378) on the People's motion.

<sup>2</sup> DEA agents were unaware of the passenger until they saw him leave Dorsey's car in the mall parking lot.

passenger returned to the black Saturn and left the parking lot. DEA agents followed the car onto the eastbound San Bernardino (Interstate 10) Freeway.

DEA Agent Paul Gelles, one of the agents following the black Saturn, testified he contacted the California Highway Patrol to arrange for a traffic stop of the car; he was put in contact with Officer Anthony Chichella. Agent Gelles told Officer Chichella “that we were on wiretaps on a[n] ecstasy dealer from the L.A. county area . . . that there was a negotiated transaction over the phone, that we had covered, or surveilled, that transaction; that we observed the driver from that vehicle get out of his vehicle, meet with our target and, then, after a few minutes, get back into his vehicle and head on the 10 East.” Agent Gelles also said to Officer Chichella “that we observed what we believed to be a one-thousand pill ecstasy deal and that that vehicle looked like it was on its way back to San Bernardino.” Officer Chichella agreed to make the requested traffic stop.

Officer Chichella testified he saw the black Saturn about 20 to 30 minutes after speaking with Agent Gelles. The car was traveling east on the Interstate 10 Freeway at nearly 80 miles per hour in violation of Vehicle Code section 22349, subdivision (a). Officer Chichella activated his patrol car’s overhead lights, and the black Saturn pulled over to the side of the freeway. Officer Chichella confirmed during his testimony that Agent Gelles had told him there was reason to believe the car contained approximately 1,000 Ecstasy tablets and to stop and search the car based on his independent determination of probable cause.<sup>3</sup>

When Officer Chichella approached the car, he saw Dorsey behind the wheel and a male passenger in the front seat. The officer explained the reason for the stop and asked to see Dorsey’s driver’s license and paperwork for the car because it had no license plates. Dorsey produced his driver’s license and retrieved the license plates from the front passenger floor. Dorsey informed the officer the address on his driver’s license was

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<sup>3</sup> Agent Gelles testified he had told Officer Chichella to obtain consent to search the car if possible, but the officer apparently did not request Dorsey’s consent after the traffic stop.

not correct. Dorsey seemed nervous and preoccupied. When he started to reach around the interior of the car, looking for paperwork with his current address, Officer Chichella became uneasy. Because Officer Chichella was alone, he ordered Dorsey out of the car for officer safety and escorted him back to the patrol car. Once there, Officer Chichella asked Dorsey several questions. Dorsey grew increasingly nervous as he described for the officer where he had been and where he was going.

After a backup officer arrived, Officer Chichella asked the same questions of the male passenger, who was still seated in the black Saturn. The passenger's answers were inconsistent with Dorsey's. Officer Chichella placed both men inside his patrol car and searched the black Saturn. He found a small plastic bag containing 1,030 Ecstasy tablets inside the center console of the car.

At the conclusion of the hearing, defense counsel moved to suppress the Ecstasy tablets found in the car, contending they had been seized as the result of an illegal search. Counsel argued, although the traffic stop itself was lawful, the stop did not justify a search of the car. Noting that Officer Chichella had agreed to determine the existence of probable cause without considering Agent Gelles's information, counsel asserted the only circumstances the officer could point to were Dorsey's nervousness and suspect responses, which did not constitute probable cause to conduct a warrantless search of the car. Counsel also argued, because Dorsey had complied with the officer's requests and had been removed from the immediate vicinity of his car, pursuant to *Arizona v. Gant* (2009) 556 U.S. \_\_ [129 S.Ct. 1710, 173 L.Ed.2d 485] (*Gant*), there was no justification to search the car incident to Dorsey's arrest.<sup>4</sup>

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<sup>4</sup> A violation of Vehicle Code section 22349, subdivision (a), is a traffic infraction, for which a driver is typically issued a citation, rather than arrested. That Dorsey was subjected to a de facto arrest for speeding instead does not implicate his Fourth Amendment rights because Officer Chichella acted with probable cause in making the arrest. (See *Virginia v. Moore* (2008) 553 U.S. 164, 176 [128 S.Ct. 1598, 170 L.Ed.2d 559].)

The prosecutor argued Officer Chichella's search of the car was lawfully based on information obtained from Agent Gelles, which provided probable cause to believe the car contained 1000 tablets of Ecstasy as a result of the recent drug transaction. Because there was probable cause to search for the illegal drugs, *Gant* was inapplicable.

The trial court, acting in the limited role of magistrate, denied the motion to suppress, explaining it "would have signed a search warrant based upon Agent Gelles's telephone tap information." The court found the search of the car and seizure of the Ecstasy tablets were lawful. Dorsey subsequently renewed his motion to suppress evidence pursuant to Penal Code sections 995 and 1538.5, subdivision (i). The motion was again denied.

## DISCUSSION

### 1. *Standard of Review*

In reviewing the ruling on a motion to suppress, the appellate court defers to the trial court's factual findings, express or implied, when supported by substantial evidence. (*People v. Hoyos* (2007) 41 Cal.4th 872, 891; *People v. Ayala* (2000) 23 Cal.4th 225, 255; *People v. James* (1977) 19 Cal.3d 99, 107.) The power to judge credibility, weigh evidence and draw factual inferences is vested in the trial court. (*James*, at p. 107.) However, in determining whether, on the facts found, the search or seizure was reasonable under the Fourth Amendment, we exercise our independent judgment.<sup>5</sup> (*Hoyos*, at p. 891; *People v. Ramos* (2004) 34 Cal.4th 494, 505.)

### 2. *Probable Cause Supported the Warrantless Search of the Black Saturn*

The Fourth Amendment's prohibition of "unreasonable searches and seizures" generally precludes warrantless searches of an individual and his possessions, including an automobile. (See *In re Arturo D.* (2002) 27 Cal.4th 60, 68.) However, under what is often referred to as the "automobile exception" to the Fourth Amendment's warrant

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<sup>5</sup> Whether relevant evidence obtained by assertedly unlawful means must be excluded is determined exclusively by deciding whether its suppression is mandated by the federal Constitution. (Cal. Const., art. I, § 28; *In re Randy G.* (2001) 26 Cal.4th 556, 561-562; *In re Lance W.* (1985) 37 Cal.3d 873, 885-890.)

requirement, “a search is not unreasonable if based on facts that would justify the issuance of a warrant, even though a warrant has not actually been obtained.” (*United States v. Ross* (1982) 456 U.S. 798, 809 [102 S.Ct. 2157, 72 L.Ed.2d 572] (*Ross*); see *Gant, supra*, 556 U.S. at p. \_\_\_\_ [129 S.Ct. at p. 1721] [“[i]f there is probable cause to believe a vehicle contains evidence of criminal activity, *United States v. Ross* . . . authorizes a search of any area of the vehicle in which the evidence might be found”]; *People v. Chavers* (1983) 33 Cal.3d 462, 466 [under *Ross*, “police officers who lawfully stop a vehicle, having probable cause to believe that contraband is located or concealed somewhere therein, may conduct a warrantless search of the vehicle that is as thorough (as to location and type of container searched) as that which a magistrate could authorize by warrant”]; *People v. Panah* (2005) 35 Cal.4th 395, 469 [same].)

Although not justified as a search incident to Dorsey’s arrest under *Arizona v. Gant, supra*, 556 U.S. \_\_\_\_,<sup>6</sup> Officer Chichella’s search of the vehicle was proper under *Ross, supra*, 456 U.S. 798 and its progeny based on probable cause to believe contraband would be found inside the black Saturn. At the time of the traffic stop Officer Chichella knew that DEA agents had witnessed a drug transaction involving a known dealer of Ecstasy and the driver of the black Saturn involving approximately 1,000 Ecstasy tablets and that after the transaction the Saturn had been driven east on the San Bernardino Freeway where it was intercepted and stopped. Under those circumstances there was a “fair probability” that contraband or evidence of a crime would be found in the vehicle. (See *Illinois v. Gates* (1983) 462 U.S. 213, 238 [103 S.Ct. 2317, 76 L.Ed.2d 527].) Thus, the trial court properly denied Dorsey’s suppression motion even if Officer Chichella

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<sup>6</sup> In *Arizona v. Gant, supra*, 556 U.S. \_\_\_\_, the Supreme Court limited the scope of a permissible search incident to the arrest of the occupant of a vehicle, holding such a search was valid “only if the arrestee is within reaching distance of the passenger compartment at the time of the search or it is reasonable to believe the vehicle contains evidence of the offense of arrest.” (*Id.* at p. \_\_\_\_ [129 S.Ct. at p. 1723].) The *Gant* Court expressly recognized the continued validity of *Ross, supra*, 456 U.S. 798, permitting the warrantless search of any area in a vehicle if supported by probable cause.

relied on another, improper ground to effect the search. (See *People v. Dey* (2000) 84 Cal.App.4th 1318, 1321-1322; *People v. Decker* (1986) 176 Cal.App.3d 1247, 1250.)

Dorsey also challenges the adequacy of this showing of probable cause, arguing there was no proof the wiretap information was reliable, the DEA agents did not observe him engage in any illegal activity and the agents lost sight of him while he was inside the shopping mall. Because he failed to make this argument in the trial court, he has forfeited it on appeal. “[U]nder [Penal Code] section 1538.5, as in the case of any other motion, defendants must specify the precise grounds for suppression of the evidence in question, and, where a warrantless search or seizure is the basis for the motion, this burden includes specifying the inadequacy of any justifications for the search or seizure.” (*People v. Williams* (1999) 20 Cal.4th 119, 130; see *id.* at p. 136 [“[d]efendants who do not give the prosecution sufficient notice of these inadequacies [in the justification for a warrantless search] cannot raise the issue on appeal”]; *People v. Derello* (1989) 211 Cal.App.3d 414, 428 [ground for challenge to denial of motion to suppress evidence forfeited on appeal because not raised in the trial court].)

### **DISPOSITION**

The judgment is affirmed.

PERLUSS, P. J.

We concur:

ZELON, J.

JACKSON, J.